

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0332
Sales and Use Tax
For The Tax Period 2006

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ISSUE

I. Sales and Use Tax - Imposition

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-2(c)(1); IC 6-6-6.5-8(d); 45 IAC 2.2-5-15, 45 IAC 2.2-4-27(d). *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E. 2d 248 (Ind. 2003).

The taxpayer protests the assessments of use tax on an airplane.

STATEMENT OF FACTS

The Taxpayer is a domestic limited liability corporation (LLC) which bought an airplane in 2006. The Taxpayer did not pay sales or use tax at the time of purchase because it claimed that it qualified for the rental/lease exemption from the sales and use tax per IC § 6-2.5-5-8. The Indiana Department of Revenue, hereinafter referred to as the "Department," assessed Indiana use tax, interest, and penalty. The Taxpayer protested the assessment. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax -Imposition

Discussion

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* In addition, exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E. 2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana also imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC § 6-2.5-2(c)(1).

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer contended that airplane qualified for exemption so it did not pay the sales or use tax at the time of purchase. The Taxpayer based its claim for exemption on the following provisions of IC § 6-2.5-5-8 which state as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property. . . .

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the *regular course of the purchaser's business*, such tangible personal property in the form in which it is sold to such purchaser. [Emphasis added]

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is *occupationally engaged in reselling, renting or leasing such property in the regular course of his business*; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be

conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

The Taxpayer stated that it was in the business of renting the aircraft and therefore qualified for the sales and use tax rental exemptions on the airplanes. This exemption requires compliance with three elements. One of these requirements is that the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business. The Taxpayer rented the airplane to four persons. Each of the four lessees is a member of the Taxpayer LLC. Essentially, the members of the LLC rented the aircraft to themselves. The Department is unable to agree that this arrangement gives rise to an exempt leasing activity.

The rental rates charged pursuant to the leases were below the fair market rental rate of comparable airplanes available to the public. The amounts paid pursuant to the leases merely covered the expenses of operating the aircraft. In this case, the lessees are sharing the cost of the purchase and operation of the airplane rather than running a rental business. Based upon the evidence presented, the Department is unable to conclude that the Taxpayer was “occupationally engaged in reselling, renting or leasing such property in the regular course of his business.” 45 IAC 2.2-5-15(b)(2).

Finding

The taxpayer’s protest to the assessment of use tax on its airplane is respectfully denied.